IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.698 OF 2003

Kashinath Sudhakar Thalkar. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. R. K. Mendadkar for the Petitioner.
Mr. C.R. Sonawane, AGP for Respondent Nos.1, 2 and 4.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 23, 2006.

P.C. (Per Dr.D. Y. Chandrachud, J.):

Rule, by consent returnable forthwith. Learned Counsel for the Respondent waive service. By consent taken up for hearing and final disposal.

The Petitioner has challenged an order passed by the Committee for Scrutiny and Verification of Tribe Claims, Konkan Division, Thane, on 30th October 2002 rejecting the claim of the Petitioner to belong to the Mahadeo Koli Scheduled Tribe. The Petitioner is stated to be working in the post of Senior Assistant with the Zilla Parishad, Raigad at Alibag. This employment was obtained by the Petitioner on the basis of a caste certificate issued by the Executive Magistrate, Alibag. The caste claim was

referred to the Scrutiny Committee for verification. The vigilance enquiry was carried out and a report came to be submitted on 10th January 2002. The Petitioner filed his reply to the Vigilance Report. The Petitioner produced certain documents in support of his claim.

2. From the affidavit in reply filed by the Research Officer, it appears that the Petitioner was asked to appear for personal hearing on 28th September 2001. The Petitioner appeared and sought time to engage Advocate, upon which the matter was adjourned till 8th November 2001. Thereupon, the Petitioner had issued a telegraphic communication that he was sick, upon which the Committee had given him a further opportunity to argue his case on 19th July 2002. On 19th July 2002, the Petitioner was present in person and expressed that he wished to engage an Advocate for arguing his case and he was accordingly directed to file a Vakalatnama of his Advocate within fifteen days. The order then records that the proceedings were “adjourned to next date”. From the record it appears that no Vakalatnama was filed and the Scrutiny Committee passed an order invalidating the claim of the Petitioner on 30th October 2002. We find merit in the contention of

the Petitioner that it was procedurally irregular for the Scrutiny Committee to dispose of the proceedings on 30th October 2002 in the manner that has been done. Even if, the Petitioner had failed to ensure that a Vakalatnama of an Advocate was duly filed on his behalf within a period of fifteen days from 19th July 2002, the proceedings had been adjourned to the next date. That date was never communicated. Assuming that the Petitioner was not represented by an Advocate, it was only necessary that a notice be issued to the Petitioner of the next date of hearing. It is true that the Scrutiny Committee is not bound to grant an indefinite number of adjournments and indeed we would accept the position of the Scrutiny Committee that the proceedings before it cannot be allowed to be delayed by an obstructive litigant. However, even in that case a modicum of a notice of hearing is necessary. Admittedly no notice was issued after 19th July 2002 listing the case for hearing before the order was passed. In the circumstances, we are of the view that it would be appropriate to set aside the impugned order and to remand the proceedings for fresh determination by the Scrutiny Committee:

3. The Petition shall accordingly stand disposed of in terms of the following directions :

-(i) In order to facilitate a fresh determination by the Committee for Scrutiny and Verification of Tribe Claims, Konkan Division, Thane, the impugned order dated 30th October 2002 is quashed and set aside without the expression of any opinion by this Court on the merits of the claim of the Petitioner;

-(ii) On remand, the Petitioner shall appear before the Scrutiny Committee on 3rd April 2006 at 11 a.m. on which date the Committee shall give appropriate directions to the Petitioner in regard to the hearing of the case;

-(iii) The Petitioner shall cooperate with the Scrutiny Committee in the early disposal of the proceedings. The Committee shall proceed to take steps in accordance with law to conclude the proceedings if the Petitioner does not cooperate in the disposal of the proceedings. The Committee is requested to expedite the disposal of the proceedings and to conclude its hearing and pass orders preferably on or before 31st July 2006;

-(iv) The continuance of the Petitioner in the post which he held pending determination by the Scrutiny Committee shall not create any equity in his favour if his caste claim is negatived upon appraisal of the committee.

4. The petition is accordingly disposed of. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.